Remarks

Based on the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Rejections under 35 U.S.C. § 103

The Examiner rejected claims 3, 9 and 11-17 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application No. 2005/0032903 (Suarez-Cervieri *et al.*) in view of "Soybean rust in Bahia State: 2002/2003 crop season," Proceedings VII World Soybean Research Conference, Brazil, 29 Feb-5 March, 2004 (Oliviera) and "Soybean Rust," Mississippi State University Online Publication, May 30, 2004 (Henn). Applicants respectfully traverse this rejection.

Applicants respectfully assert that, alone and together, Suarez-Cervieri *et al.*, Oliviera and Henn do not properly establish a *prima facie* case of obviousness against the currently pending claims. In sum, there is nothing in any of the cited art, the knowledge in the art and the nature of the problem to be solved, that would provide a reason for practicing the specific claimed method of protecting soya bean plants against soya bean rust, comprising applying the demethylation inhibitor (DMI) fungicide fluquinconazole to the seed of said plants.

Suarez-Cervieri *et al.* discloses a method for controlling rust disease in legumes by treating the aerial parts of plants with an aqueous preparation of strobilurin-containing formulation that may include additional fungicides. The disclosure clearly focuses on the treatment of leaves (*see* paragraphs [0004] and [0041]) using a strobilurin, in

particular pyraclostrobin (*see* paragraph [0016]). Suarez-Cervieri *et al.* does not disclose protecting soya bean plants against soya bean rust, comprising applying fluquinconazole to the seed of said plants. A person of ordinary skill in the art reading the disclosure of Suarez-Cervieri *et al.* directed to controlling rust disease by treating the aerial parts of plants with a strobilurin-containing formulation would not arrive at the claimed method of protecting soya bean plants against soya bean rust, comprising applying fluquinconazole to the seed of said plants.

At paragraph [0044], Suarez-Cervieri *et al.* discloses treating seeds with strobilurin. However, this disclosure alone would not lead a person of ordinary skill in the art to the claimed method of protecting soya bean plants against soya bean rust, comprising applying fluquinconazole to the seed of said plants.

The Examiner notes that the difference between the claimed invention and Suarez-Cervieri *et al.* is that the claimed method requires the use of fluquinconazole combined with prothioconazole or tolyfluanid, whereas Suarez-Cervieri *et al.* is directed to the use of strobilurin-type fungicides. *See* Office Action at page 4. Applicants submit that the disclosures of Oliviera and Henn, alone or together do not cure the deficiencies of Suarez-Cervieri *et al.*

Oliviera discloses the evaluation of the efficacy of fungicides, including fluquinconazole, in controlling soya bean rust. However, Oliveria does not disclose protecting soya bean plants against soya bean rust, by applying fluquinconazole combined with prothioconazole or tolyfluanid to the seed of said plants. Specifically, Oliviera is silent regarding combining fluquinconazole with any other fungicide. In addition, Oliviera is silent regarding applying fungicide to soya bean seed. Rather, the

fungicide application in Oliviera is spray application. Thus, a person of ordinary skill in the art reading Suarez-Cervieri *et al.* in view of Oliviera would not have a reason to protect soya bean plants against soya bean rust, comprising applying fluquinconazole to the seed of said plants.

Henn does not cure the deficiencies of Suarez-Cervieri *et al.* and Oliviera. Henn discloses application of fungicides, including fluquinconazole, for controlling soya bean rust. However, Henn is silent regarding protecting soya bean plants against soya bean rust, comprising applying fluquinconazole combined with prothioconazole or tolyfluanid to the seed of said plants. Specifically, Henn is silent regarding combining fluquinconazole with any other fungicide. In addition, Henn is silent regarding applying any fungicide to soya bean seed. Rather, the fungicide application in Henn is spray application. Thus, a person of ordinary skill in the art reading Suarez-Cervieri *et al.* in view of Henn would not have a reason to protect soya bean plants against soya bean rust, comprising applying fluquinconazole to the seed of said plants.

Taken together, Suarez-Cervieri *et al.* Oliviera and Henn teach, at best, the use of strobilurin-type fungicides in controlling rust disease in legumes and the general use of fungicides in treating soy bean rust by spray applications only. However, none of the cited references refer to the presently claimed method of protecting soya bean plants against soya bean rust, comprising applying fluquinconazole to the seed of said plants. Thus, this method is not obvious in view of the cited art.

The Examiner asserts that "[i]t would have been obvious to on of ordinary skill in the art to combine the teaching of the two cited references . . . because the substitution of strobilurin-type fungicides with fluquinconazole would have yielded predictable results

. . . because both actives are known to protect soybeans from rust or from fungi that cause rust." *See* Office Action at page 5. By this assertion, the Examiner has not provided an adequate reason why one of ordinary skill in the art would have modified the teaching of Suarez-Cervieri *et al.* to substitute the strobilurin-type fungicides with fluquinconazole in view of Oliviera and Henn to achieve the claimed invention.

There is nothing in any of the cited art or the knowledge in the art that gives a reason to substitute the strobilurin-type fungicides of Suarez-Cervieri *et al.* with fluquinconazole for treating soya bean rust and nothing that gives reason to apply the fungicides to the seeds of the soy bean plants. Contrary to the Examiner's assertion, the substitution of the strobilurin-type fungicides of Suarez-Cervieri *et al.* with fluquinconazole would not have yielded predictable results, particularly in the presently claimed method, because none of Suarez-Cervieri *et al.*, Oliviera or Henn disclose applying fungicides to the seeds of soybean plants. A person reading Suarez-Cervieri *et al.*, Oliviera and Henn would, at best, have only envisioned spray application of fungicides. None of the cited references specifically refer to the presently claimed method of protecting soya bean plants against soya bean rust, comprising applying fluquinconazole to the seed of said plants. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness.

Even if the claimed method were to be considered *prima facie* obvious in view of the cited art, which Applicants assert it is not, as noted at page 4, lines 3-4 of the pending application, it is surprising that applying fluquinconazole to the seed of soya bean plants is effective to protect soya bean plants against soya bean rust because this disease is wind-borne and not soil-borne. Moreover, Example 1, at page 18 of the pending

application, indicates that seed treatment with fluquinconazole provides complete disease control for more than 30 days. These results are clearly unexpected in view of the cited art and would render any showing of *prima facie* obviousness moot.

Reconsideration and withdrawal of the outstanding rejection is earnestly solicited.

Respectfully submitted,

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